

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

MAY - 5 2006

WILLIAM McCracken,
Plaintiff,

Michael N. Milby, Clerk of Court

v.

CIVIL ACTION NO. H-03-5726

EXXON MOBIL CORP. INC
and KELLY SERVICES, INC.
Defendant.

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JURY NOTE 1

*For purposes of answering question #1, Jury Instructions on pg. 9
state "for purposes of Federal Law, both EXXON Mobil &
Kelly Services employed Mr. McCracken." How can question
#1 & #2 have a different answer?*

5-506
Date

Kim Kieler
FOREPERSON

DATE

LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

JURY NOTES SHOULD BE USED IN NUMERICAL ORDER.
JURY NOTES ARE A PERMANENT PART OF THE RECORD.
JURY NOTES SHOULD BE RETAINED AND GIVEN
TO THE COURT WITH THE CHARGE AT THE CONCLUSION OF DELIBERATIONS.

RESPONSE TO JURY NOTE

In response to your question, you were instructed on page 9 that both Exxon Mobil and Kelly Services employed Mr. McCracken for the purposes of federal employment law, but that does not mean that both of them made the decision to terminate his employment. As you were instructed, to find a defendant employer liable for retaliation, the plaintiff has the burden of proving that the employer took an adverse employment action against him – in this case, to terminate the employment – because the employee engaged in protected activity, as defined in the court’s instructions. To find both defendants liable, Mr. McCracken has the burden of proving that they both made the decision to terminate Mr. McCracken’s employment because he engaged in protected activity. Exxon Mobil disputes that it made the decision to fire Mr. McCracken, so to answer Question No. 1, you must first decide whether Exxon Mobil made the decision to terminate Mr. McCracken’s employment and, if so, whether it did so because Mr. McCracken engaged in protected activity rather than for a legitimate, nonretaliatory reason. Kelly Services does not dispute that it made the decision to fire Mr. McCracken, but denies that its decision was in retaliation for protected activity. Therefore, in answering Question No. 2, you must decide whether Kelly Services made the decision to terminate Mr. McCracken’s employment because he engaged in protected activity rather than for a legitimate, nonretaliatory reason.

You must consider this instruction in combination with all the instructions given to you in the court’s instructions to the jury.